IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

JUDGMENT

1. Noonda Ram & Ors. VS. Addl. Collector, Nagaur & Ors.

D.B. CIVIL SPECIAL APPEAL NO.223/2000
against the judgment dt.18.11.1999 passed in S.B. Civil Writ Petition No.2287/1989.

2. Chanda Ram & Ors. VS. State of Raj. & Ors.

D.B. CIVIL SPECIAL APPEAL NO.257/2000
against the judgment dt.18.11.1999 passed in S.B. Civil Writ Petition No.2456/1989.

Reportable

Date of judgment : 8th March, 2006

PRESENT

HON'BLE MR. JUSTICE RAJESH BALIA
HON'BLE MR. JUSTICE R.P. VYAS

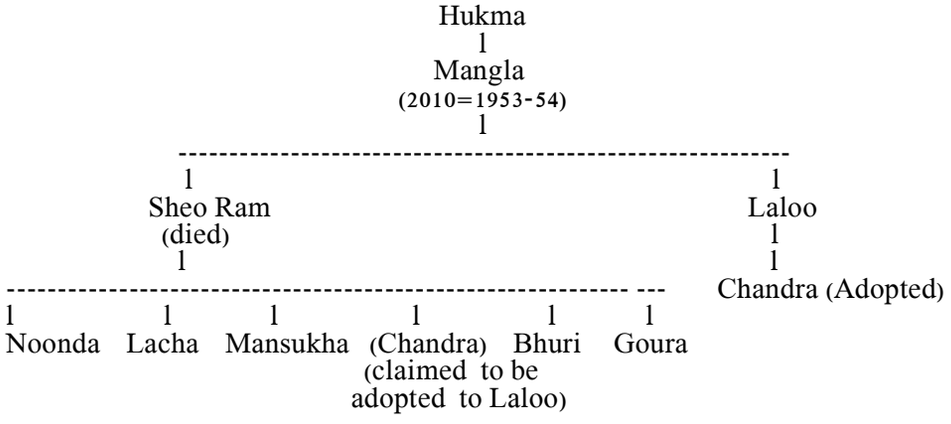
Mr. J.L. Purohit for the appellant.
Mr. L.R. Upadhyay, Addl. Govt. Advocate.

BY THE COURT:- (Per Hon'ble Mr. Rajesh Balia, J.)

Learned counsel for the appellants states that since connected appeal No.257/2000 has been filed on behalf of respondent No.4 by the present counsel and the interests are not contrary to each other, the service of notice on

respondent No.4 in the present appeal may be dispensed with as the learned counsel for the appellant will be arguing both the appeals simultaneously on behalf of sons of Shiv Ram and legal representatives of Laloo, who were the original brothers and sons of Mangla. Accordingly, the service on respondent No.4 in the present appeal is dispensed with as his interest is represented by the appellants.

We have heard learned counsel for the parties on merit of these two appeals as they are arising out of common ceiling proceedings initiated and concluded against Laloo S/o Mangla. According to the facts noticed by the learned Single Judge, the following pedigree of the two parties is as under:-



Mangla admittedly died prior to

commencement of Hindu Succession Act somewhere in 1953-54 in Samwat 2010. He had two sons Sheo Ram and Laloo. Sheo Ram died leaving behind four sons and two daughters and widow. The Board of Revenue in its order recorded that the land in question was originally held by Mangla and on his death by his heirs.

It must be noticed from the aforesaid finding that Mangla died in 1953-54 prior to commencement of Hindu Succession Act. Since Sheo Ram had already died and Laloo was eldest son of family, his name was entered in the land records.

Under chapter 3B of the Rajasthan Tenancy Act in the first instance the ceiling proceedings were commenced against Laloo. The said proceedings were dropped vide order dated 28.7.1971 on finding that Laloo had 7 members in his family and, therefore, he did not hold the land in excess.

However, prior to the proceedings under Chapter 3B culminated, Chandra filed suit for partition against Laloo and that suit had been

decreed as the parties arrived at a compromise on 28th April, 1969. The fact that the partition decree was passed between the members of the family of Mangla is also not in dispute.

By order dated 5.7.1979, the State Government in exercise of its powers under Section 15(2) directed reopening of ceiling case of Laloo inter alia on the ground that inquiry into the number of family members was not conducted; and the transfers made after 25.2.1958 had not been inquired into; that the daughter-in-law of Laloo was held to be member of the family when she cannot be member of family of father-in-law and the grand-son of Laloo was included as a member of family but he was not born on the relevant date 1.4.1966. It was also found that the competent officer has not also inquired into the alleged adoption of Chandra to Laloo.

In response to this, it was brought to the notice of the competent officer that as on 1.4.1966, Laloo alone was not holding the land. The land was being ancestral and Laloo's brother and his brothers son were also sharers and the

suit for partition has been decreed between the share holders. It was also pointed out that out of the land held by the petitioners, 9 bighas land was already utilised for construction of road by the State Government and is not available for acquisition. The factum of existing decree of partition of the land in question was also brought to the notice of the competent officer.

While considering the points stated in the order under Section 15(2), the competent officer refused to recognise the decree of the Court on the ground that it was a collusive decree and held that 69 bighas 3 biswas of land is surplus in the hands of Laloo. The adoption of Chandra to Laloo was also not accepted.

The appeal was dismissed by the Board of Revenue on 15.3.1985. A review petition was filed for bringing on record the copies of Jamabandies of Samwat 2010 to 2030, in reference to which in the order of review, we have noticed above which supported the case of the petitioners that the land was originally held by Mangla. It was not the case of the Board of Revenue that

Jamabandi which has been produced before it and which is part of the public record was of doubtful origin. In view of this evidence the factual position of the order passed by the Board of Revenue was apparently erroneous and review ought to have been granted. It is also proved on record that the land in question was ancestral. These findings, in our opinion, sufficient for the Board of Revenue to grant the review and to have considered the case of the petitioners in the light of the revenue record which was relied on by the competent authority and which was before it.

Be that as it may, the learned Single Judge also did not notice the facts of existing decree of partition of land and dismissed the writ petition on the ground that the petitioners have not proved their case of land being ancestral.

Having considered the contentions raised and record that has been placed before us, it is apparently clear firstly that the authorities of Ceiling Act had discarded the decree of the

competent court on his own by ignoring it as a collusive decree. This is not given to any authority much less any statutory authority to discard the validity of a decree of a competent court partitioning the suit property. Merely because it happened to be based on compromise, it cannot be assumed to be collusive and ineffective. Collusion is a question of fact and had to be proved as any other question of fact. The rights between the parties were declared and the partition between co-sharers took place in recognition of any pre-existing right and that is why the partition is not considered to be a transfer. Therefore, if a valid decree which has not been impeached by any one at any time, the competent authority under Ceiling Law could not by ignoring a decree of competent court reach its conclusion contrary to that.

It is not in dispute that the property if held to be ancestral no members of coparcenery have surplus land.

In view of the above, both the appeals are allowed. The judgement under appeal is set

aside. Writ petitions are allowed and the impugned orders of the competent officer and the Board of Revenue in appeal are set aside. No order as to costs.

[R.P. VYAS], J. **[RAJESH BALIA], J.**

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